competitive CMRS services. Allowing the 800 MHz SMR industry to continue to develop as it has over the last twenty years, even subject to the requirements of Title II, will make it a strong CMRS competitor, thus accomplishing the Commission's stated goal.

Adoption of CCI's proposal will allow the Commission to accomplish the Congressional goals it set as guideposts in the regulation of the new CMRS services.

Elimination of the Nextel proposal will give the 800 MHz SMR industry a fair chance to compete with cellular and PCS as CMRS. With all commercial mobile services regulated as CMRS, subject to Title II requirements, but not subject to loading and spacing requirements, the regulatory playing field will be level and competition robust.

Moreover, if the Commission declines Nextel's invitation to upend the 800 MHz industry and instead complies with the Congressional mandate to regulate all commercial mobile services as common carriers, eliminating loading and spacing restrictions, it will accomplish the second and third enumerated congressional goals: establish an appropriate level of regulation for the administration of CMRS and resolution of substantial similarity issues with a view toward ensuring that unwarranted regulatory burdens are not imposed on reclassified CMRS providers.

Finally, CCI's proposal will further Congress' economic goals. It will foster economic growth both in terms of creating and preserving jobs throughout the U.S. and in terms of distribution of economic growth. Moreover, prior to the Commission's initiation of this proceeding, investment in the mobile telecommunications infrastructure was proceeding apace. The cloud created for local and regional operators by this proceeding and the freeze on the licensing of new facilities has stymied that investment. Released from these burdens

local and regional operators will implement new, more efficient services using frequencies already authorized to them.

As is discussed above, existing dispatch services cost each subscriber about fifteen dollars ($15) per month. This low-cost service makes the wireless portion of the information highway available to users who might not be able to afford the more cost intensive alternative wireless services. At the same time, by encouraging cooperative arrangements and technological innovation, it allows more advanced services to develop as the market demands or responds to them. This is in contrast to the Nextel approach which would attempt to force higher priced, more sophisticated services on the market from the supply side."

IV. MANDATORY RELOCATION

CCI's proposal accomplishes the goals identified by the Commission and Congress without necessitating relocation of incumbent licensees. In contrast, the Nextel Plan would require, either on the one hand, mandatory relocation or retuning of incumbent licensees on the frequencies for which an MTA licensee is licensed, or, on the other hand, underutilization of these frequencies because of the constraints imposed by MTA licensing. As a further accommodation to Nextel, the Commission requested comment on establishment of such mandatory relocation procedures. The Commission proposes an initial period in which the targeted licensee may negotiate voluntary relocation agreements. After the expiration of that voluntary negotiation period, the licensee would then enter into mandatory relocation phase in which the licensee must relocate upon written request and on the terms presented. The relocation is enforced when the MTA licensee requests that the Commission

relocate the incumbent licensee and demonstrates of the availability of "fully comparable alternative frequencies," its guarantee to pay all relocation expenses, including all engineering, equipment, site and regulatory fees, as well as any reasonable additional costs that the relocated licensee may incur, and that it will construct new SMR facilities, if necessary, and test them for comparability to the existing system. Despite the guarantee of reimbursement of the costs of relocation, this proposal cannot be implemented without compromising the existing rights of each incumbent licensee in its licensed facilities.

Because substantially all of the 800 MHz facilities have been licensed, it is difficult to image how the Commission proposes to find relocation channels. In any event, the relocation channels are not and never can be "fully comparable alternative frequencies." As is demonstrated in the attached declaration of David J. Chadwick, P.E., the channels identified as relocation channels are technically inferior to the block of spectrum from which the Commission proposes to more the incumbents. Specifically, because of the space between channels, calls are more likely to be dropped and the level of service provided by incumbents will deteriorate.

Moreover, mandatory relocation, as proposed, would amount to an unconstitutional taking of the bundle of rights attendant to the licensees' interest in its license and business.

In Fugazy Express, Inc., 124 B.R. 426 (S.D. NY 1991), the Federal District Court for the Southern District of New York determined that the Act implicitly creates a property right in the license by providing that no such license shall be construed to create any right beyond the terms, conditions and periods of the license. Additionally, the licensees's bundle of rights attendant to its FCC license include the value of the spectrum allocated to it.

Implementation of any plan which diminishes the licensee's rights in its licensed facilities would amount to an unconstitutional taking of the licensee's interest in its ongoing business.

The consideration of what constitutes a "taking" for Fifth Amendment purposes has been debated through many years. The Supreme Court has recognized that the "Fifth Amendment's guarantee [is] designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice should be borne by the public as a whole." Armstrong v. U.S., 364 U.S. 40, 49, 80 S.Ct. 1563, 1569 (1960). The forcible moving of an incumbent licensee to an inferior channel position amounts to an interference with that licensee's operations of such a magnitude that "there must be an exercise of eminent domain and compensation to sustain it." Penn Central Transportation Co. v. City of New York, 98 S.Ct. 2646, 2665 (1978), citing Pennsylvania Coal Co. v. Mahon, 260 U.S. at 413, 43 S. Ct. at 159.

Mandatory relocation will require the licensee to move from its current desirable position in the bandwidth to a lower channel, undesirable position. As is discussed more fully in the comments of SMR Won in this proceeding, the compensation contemplated by the proposal cannot compensate the incumbent for this deprivation.[27]

CCI's proposal would not require relocation of any incumbent licensees. It would, in fact, protect the incumbent licensees. The Nextel plan would destroy a robustly competitive industry to make it the sole provider of 800 MHz SMR service. The Commission has not articulated how adoption of the Nextel plan would serve the public interest. In contrast, CCI

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[27] That portion of the Comments of SMR Won is incorporated herein by reference.

has demonstrated that 800 MHz SMR operators can become CMRS operators without interruption of service to the public, consistent with the goals enumerated throughout this proceeding and in the furtherance of the public interest.

The 800 MHz SMR industry has realized amazing growth and development in an historically cooperative regulatory environment. This measure of success has only been possible because the industry has provided a service to the public at an affordable price. Adoption of the Nextel plan would destroy a competitive industry. Destruction of this industry is clearly contrary to the public interest.

For the foregoing reasons, CCI urges the Commission to reject the proposal put forth by Nextel and embodied in the Further Notice in favor of adoption of the more reasonable approach presented by CCI.

Respectfully submitted,

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January 5, 1995

46799-002/COMMENTS.CCI

EXHIBIT 1

1/3/94 p 1&4 WSJ

For Nextel, '94 Was Best of Times and Worst of Times

Shares Soared on Promise of Cellular Network, Then the Bubble Burst

By GAUTAM NAIK
Staff Reporter of THE WALL STREET JOURNAL

Morgan E. O'Brien sometimes indulges in an unlikely pastime, a plunge on a roller coaster. The recent fortunes of his company, Nextel Communications Inc., may have given him his most dizzying ride yet.

Tiny, brash Nextel rose to prominence in the past year by using an ever-soaring stock price to acquire legions of radio-dispatch licenses, tapping Wall Street's hunger for wireless plays by tirelessly promoting itself as a someday rival of cellular giants.

But Nextel shares have plunged about 70% from their 52-week high, wiping out $2.5 billion in market value in the past nine months. The company has failed to find a backer since MCI Communications Corp. bailed out of a planned $1.36 billion investment in August. Technical glitches continue to snarl its new phone service in California. Lacking cash, Nextel has also shelved plans to bid for federal licenses to provide new "personal communications services."

Company Lowers Sights

Now Nextel has all but abandoned ambitions to become a cellular titan any time soon. It will get back to basics, jazzing up the dispatch services, which will provide $200 million in annual revenue when all of its transactions close. The company will also have a captive base of 750,000 old-line dispatch customers, including taxi drivers, contractors and plumbers.

Nextel must persuade customers who spend only about $20 a month to spend as much as three times that sum to get a new array of fancier features, such as wireless messaging and cellular phone service. That would help Nextel close an $800 million gap in funding a $2.5 billion overhaul of its dispatch systems. The company, which has annual cash flow of $29 million, is binding some 400 systems into a national wireless network, and in three years will face $150 million in annual interest payments on $1.7 billion in junk-bond debt.

Customers for Nextel's new offerings may not be there. Most of its current customers "aren't interested in the bells and whistles," contends Robert Janssen, president of San Diego, Calif., dispatcher Cardiff Mobile Communications Inc. His clients lease only five to 10 radios and pay monthly fees of $12 to $14 a unit. "They are primarily price-motivated," he says. And many big corporations already run their own networks.

Nextel won't find the $800 million it needs from the equity and debt markets. And its major patron Motorola Corp. may be running out of patience. Motorola, which intends to equip the network, has already offered $685 million in vendor financing, after agreeing last summer to sell all of its dispatch systems to Nextel for stock valued at $1.7 billion. Since then the value of Motorola's Nextel stake has fallen by about $800 million, and Motorola's pact with Nextel leaves it no escape clause.

Wall Street fell in love with Nextel as the little-known dispatch company gathered up hundreds of scratchy systems at cheap prices and tried to multiply their value by turning them into a new national phone system.

This compelling vision was largely propagated by Nextel and its underwriters at Merrill Lynch & Co. Nextel's Mr. O'Brien, fair-haired and silver-tongued, unabashedly proclaimed, "Our Nextel system is a replacement for the national telephone infrastructure." A late 1993 forecast by Merrill Lynch analyst Linda Runyon suggested that Nextel could sign up more than 400,000 new wireless customers in 1995 alone and possibly triple that in four years. Nextel today has 15,000 digital subscribers.

Such hype inflated Nextel's stock price even as the company floated millions of new shares to fund its buying binge, and led to the stock's crash when it became painfully clear that the cellular ambitions had been oversold. At the stock's 52-week high of $46.75 in March, nine Wall Street analysts had healthy "buy" recommendations on Nextel; even by June, when the stock had fallen by more than one-third, eight analysts were still pushing a "buy."

"Every analyst was so positive on Nextel. They were dead wrong," says Scott Vergin, former fund manager of Lutheran Brotherhood Fund, which acquired 250,000 Nextel shares at $40 a share and finally sold at about $30, resulting in a loss of $2.5 million. "It's been very humbling," says Stephanie Comfort, a Morgan Stanley & Co. analyst who has maintained a "buy" rating on Nextel from the moment it went public three years ago through the stock's rise and plunge.

Mr. O'Brien counters that Nextel had never portrayed itself as the next cellular giant pursuing "glove-compartment" consumers. Instead, it has always aimed its new cellular features at "the mobile work force" now using dispatch. As for the national digital network, hardly useful to a local plumber, Mr. O'Brien now says it would lure corporate accounts.

Those assertions stun some analysts. "Morgan O'Brien oversold Nextel, he drove way beyond his headlights," says Jan Klein of Dean Witter Reynolds Inc., who initiated coverage of Nextel on Dec. 22 with a "sell" rating. Another analyst privately asserts, "Nextel was never described as a big corporate-fleet kind of company. That's disingenous."

If Nextel's cellular dreams are fading, what is its value as a pure dispatcher? Morgan Stanley's Ms. Comfort estimates $6 to $7 a share. With the stock in the $14 range, investors seem to be placing a premium of more than $7 a share on Nextel's cellular prospects. At Nextel's peak, the premium was almost $40 a share.

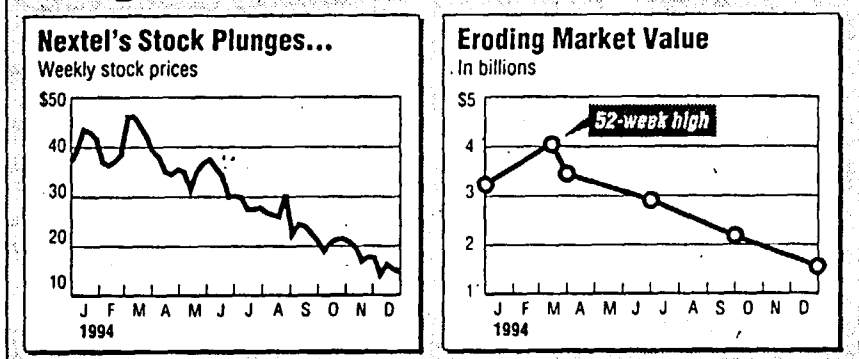
Beloved by Short Sellers

Even the smaller premium could be risky. In a Dec. 27 letter to investors, Nextel disclosed that its Motorola system is taking "much longer than expected." Nextel has the largest short position of all Nasdaq stocks, suggesting investor bearishness. By mid-December, investors had sold some 12 million Nextel shares short, up almost two million shares in a month.

As a pure dispatch player, "there's no question Nextel would be the premier state-of-the-art company in the nation," says Frederick Moran of Salomon Brothers, a consistent bear on Nextel. Few observers, however, believe Mr. O'Brien will be content in the backwaters of the dispatch market. Nextel says it has just turned on its digital networks in Chicago and New York.

But Alan Shark, president of the American Mobile Telecommunications Association, a dispatch industry group that Nextel belongs to, says Nextel "would have been better off not shooting for the moon and comparing themselves with the cellular industry in the first place."

Fading Fortunes



Sources: Baseline, Company reports

EXHIBIT 2

of

AirNet Communications Corporation

Profile

AirNet Communications Corporation is a new wireless communications infrastructure company founded in January 1994. The company was formed to commercialize technology which was successfully developed for D.o.D. applications. Ownership is divided among three venture capital companies, Venture First of Melbourne, in a limited partnership with Harris Corporation; Fostin Capital Corporation; Patricof & Co. Ventures; and the CEO and President, Bernard R. Smedley.

AirNet intends to be a major international supplier for switch independent, wireless broadband base stations and software. A unique hardware platform with advanced software features and functions allows AirNet to offer the wireless industry a low cost family of base station products.

AirNet products establish a new paradigm for wireless communication carriers. AirNet will offer low cost, high capacity and high quality wireless infrastructure components that will allow our customers to lower their operating costs to attract the mass consumer market. AirNet technology will become the facilitating force that generates market penetration of thirty percent by the year 2000, a substantial increase over the current five to eight percent penetration in most developed countries.

Critical capacity issues in the United States, Europe and Japan, have prompted spectrum coordinators, such as the Federal Communication Commission (FCC) in the U.S., to allocate 120 MHz of licensed spectrum for new wireless services. The U.S. spectrum will be auctioned later this year to future operators. This will increase the market for wireless infrastructure. Standards for air interfaces are languishing in U.S. standards organizations and clear direction is not anticipated soon. This trend is repeated in each major region of the world. Global standards are regional or government-specific. AirNet has the consummate position in time and with technology to come to market in early 1996 with products to meet market challenges at an affordable price in each of these regions of the world.

Business Strategy

Wireless technology is driven to provide communication and access to information at any time and any place without sacrificing reliability or cost. Consequently, the world population expects tetherless services of all types: voice, data, and video. Capacity, uniform standards, and price conditions present significant barriers domestically and throughout the world. Cellular was designed to provide premium mobile service to business users and demands premium prices. The consumer mass market is enamored with portable telephones but, simply cannot afford high priced cellular service. Prices must fall!

Governments worldwide recognize that current spectrum allocations are insufficient to support a mass market, especially at a projected thirty percent penetration or more. Regulatory activity to globally reallocate spectrum for additional capacity is at an all time peak.

Historically, governments have regulated air-interface standards. In the U.S., however, carriers can currently select and implement the air-interface of their choice. In the rest of the world multiple standards exist, and carriers are trying to unite on a single worldwide, global system for mobile telecommunications (GSM). Chaos in air-interface standards causes carriers to delay protocol-specific investment decisions. This delays wireless service to the masses and revenue to the carriers.

How can service providers "future-proof" their infrastructure investment, while at the same time reducing prices just enough to entice the mass market? The answer is through companies that provide innovative technology with low cost, low maintenance, and high capacity solutions! AirNet Communications Corporation is such a company!

Opportunity

AirNet's unique technology offers the wireless carrier a digital base station solution that can be programmed to provide one or more concurrent protocols. Any major wireless service provider can future-proof their current technology and achieve global market goals quickly with AirNet products.

AirNet's goal is to become a $1 billion per year company within 10 years. An early position in the vigorously ascending global wireless market combined with pristine technology, potential to future-proof old investments, and aggressive domestic and global wireless market windows, provide AirNet a fast track to the future.

TECHNOLOGY

The Carney Engine™ and Patents

Wireless communications using broadband radio technology is unique to the commercial market and opens the field for new and creative low-cost infrastructure solutions. The Carney Engine™ is an enabling technology that provides mass market access to wireless communications by making the infrastructure affordable and future-proof! One broadband radio combined with the AirNet Broadband Processing Unit (BPU) which is driven by the Carney Engine™ provides access to all channels within its processing bandwidth.

AirNet's is the only known technology that provides the processing power for broadband receive and transmit on a single pair of boards. Due to the significantly reduced number of components, AirNet stations will be inexpensive to own and operate. The AirNet architecture is protocol-independent and can eliminate capacity issues. MicroCell techniques, with the inherent

high back haul cost, which were recently cutting edge technologies, are now a generation behind AirNet's approach. The Company's intellectual property strength revolves around the Carney Engine™ which is named after Mr. Ronald R. Carney, its primary inventor and a founding member of AirNet Communications Corporation.

AirNet acquired its initial patent (pending) from Harris Corporation in a technology transfer agreement between the two companies, specifically for the purpose of commercializing the technology. The patent documents the Carney Engine™ approach to a Broadband Transceiver System (BTS). Recent advances in digital ASIC size and cost reduction now allow this advanced technology to be applied to commercial markets.

The Carney Engine™ is a fundamental technology that provides for a paradigm shift from high cost, limited capacity and protocol-specific architecture to low cost, extensive capacity, and frequency agility. The Carney Engine™ processes all channels concurrently which allows infrastructure equipment increased capacity in smaller space. This creates a more cost effective service. "Smart" antenna beamforming technologies become cost effective when combined with the Carney Engine™, enabling increased frequency reuse and capacity.

The AirNet BTS flexibility is derived from being programmable, since the base station is almost entirely digital. It can change from one air-interface standard to another by adding additional protocols under software control from the MTSO or the BSC. This feature permits the service provider to buy one hardware platform and configure it for multiple applications, reducing maintenance and logistic costs. Two sets and assorted radios in the same platform allow multi-service capabilities such as cellular (analog and digital) and PCS. All of these capabilities open the path for new and advanced intelligent services.

AirNet's strategy is to create a solid intellectual property portfolio by filing an array of patents in the area of broadband wireless communications. The intellectual property defends AirNet's position as a technology innovation leader in the wireless market

Status and Schedule of Platform Technologies

The impact of the Carney Engine™ in conjunction with other wideband innovations will be significant on the commercial market. A Digital Combiner, a critical portion of the Carney Engine™ was constructed and tested in July of 1994. No other known company can perform this function digitally on a single printed circuit board. A demonstrable prototype of the Combiner portion of the Carney Engine™ is currently in place to provide early proof of concept. The completed integrated Carney Engine™, including the Channelizer, is scheduled for completion by October of 1994.

AirNet's technology also extends to other portions of the base station platform. A processing method to reduce wattage of a linear power amplifier is among AirNet's many patent applications. Highly sectorized antennas, "smart" antenna designs, and advances in high power amplifiers will also improve capacity and performance of the base stations. With AirNet systems, state-of the-art technologies like smart antennae become cost effective to implement.

Future generations of the AirNet BPU will encompass AirNet's enhanced Carney Engine™ and will continue to incorporate advanced and emerging technologies to assure that AirNet remains years ahead of the competition. This will provide our customers with the highest performance and most cost effective solution available.

AIRNET PRODUCT FAMILY

AirNet's product line is comprised of four Broadband Transceiver Stations (BTS) models: BTS-288, BTS-192, BTS-96, and BTS-48. These BTS units have 288, 192, 96, and 48 voice/data channels, respectively. Each unit can be programmed to be included in cellular, PCS, GSM, or Wireless Local Loop applications. AirNet's proprietary digital technology allows for a large number of channels in a small package and will change the current 48-channel industry paradigm.

Future AirNet products could provide advanced services under software control. Data, voice and video could be multiplexed by the AirNet BTS aggregating information over multiple channels through dynamic bandwidth allocation.

AirNet's flexible hardware platform future-proofs broadband base station purchases by supporting multiple over-the-air protocols or even multiple protocols on the same platform. AirNet's all-digital base stations can be placed into any system whether analog, digital, or the new PCS market. AirNet's capacity per cell can handle the complete allocated spectrum within one base station rack, at a lower price than any competitive base station.

AirNet's BPU solves capacity issues by operating from 24 to 96 channels in one chassis of one cubic foot. Carriers can add multiple BPU chassis to reach large capacities up to the limit of the allowed spectrum. Site operation and maintenance costs are dramatically reduced by AirNet base stations. This is the result of a significantly reduced component count per base station and the all digital processing approach.

AirNet products are packaged in small chassis and in small weather-proofed housing. This small packaging allows for installation in non-traditional sites such as pole top, rooftop or an in-building tower.

EXHIBIT 3

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of	)	
	)	
Implementation of Sections 3(n) and 332 of the Communications Act	)	GN Docket No. 93-252
	)	
Regulatory Treatment of Mobile Services	)	
	)	
Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band	)	PR Docket No. 93-144
	)	
Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and 935-940 MHz Band Allotted to the Specialized Mobile Radio Pool	)	PR Docket No. 89-553

To: The Commission

PETITION FOR PARTIAL RECONSIDERATION

CHADMOORE COMMUNICATIONS, INC.

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December 21, 1994

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SUMMARY

Chadmoore Communications, Inc. hereby requests that the Commission reconsider portions of the Third Report and Order in the above-captioned matter. Specifically, CCI requests that the Commission reconsider and rescind its rules relating to the licensing of 800 MHz facilities.

The Third Report and Order was adopted in response to Congress directive to implement symmetry in regulation of Commercial Mobile Services. The Commission's attempt to meet this challenge, however, exacerbates the disparity in regulation noted by Congress.

Because the Commission proposes to license 800 MHz facilities in large contiguous blocks of spectrum in large MTA/BTA geographic regions, the practical effect of the rules will be the licensing of facilities already occupied by incumbent 800 MHz licensees. It is clear from the Third Report and Order and from the Further Notice of Proposed Rulemaking arising from the Third Report and Order that the Commission will eventually require these incumbents to vacate the spectrum on which they now serve the public.

Rather than alleviating the disparity found by Congress, the Commission has now created yet another class of disparately regulated CMRS competitor. The three classes are incumbent 800 MHz licensees who face the auction of the very spectrum by which they compete in CMRS; the new entrants at 800 MHz who will pay for the authority to use the spectrum by which they will compete in CMRS; finally, incumbent cellular licensees who receive their authorizations without competitive bidding and who do not face the reallocation of the spectrum by which they compete in CMRS. Clearly, this is not what Congress intended.

The Commission, by its actions, affects the fundamental rights of incumbent 800 MHz SMR licensees. Although implementation of rules establishing symmetry of regulation in CMRS is within its discretion, it must choose a course of action which is reasonably related to the Congressional mandate and narrowly tailored to meet that goal. Wholesale restructuring of the 800 MHz industry is not an action which is narrowly tailored.

Moreover, the Commission relies on information in the record of the 800 MHz EMSP Notice to support the adoption of the rules. That record cannot support the rules set forth because it clearly limited the licensing proposal to the extent spectrum was available.

The Commission's actions do not serve the public interest in that they will interrupt and delay service to the public.

Additionally, the Commission adopted the freeze on acceptance of 800 MHz applications without following the formalities required by the Administrative Procedures Act and therefore the freeze cannot remain in effect.

Finally, CCI notes that the sunset of special temporary authorizations granted under Part 90 is discriminatory and improper and requests, at the very least, that the Commission allow the STAs to remain in effect pending the grant of major modification applications pending at the Commission now for some time.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of	)	
	)	
Implementation of Sections 3(n) and 332 of the Communications Act	)	GN Docket No. 93-252
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To: The Commission

PETITION FOR PARTIAL RECONSIDERATION

Chadmoore Communications, Inc. ("CCI"),[1] by counsel, and pursuant to Section 1.429 of the Commission's rules, 47 C.F.R. 1.429, hereby requests that the Commission reconsider portions of the Third Report and Order[2] in the above-captioned matter ("Third Report and Order"). In support of its request, CCI submits:

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[1] CCI has standing to Petition for Reconsideration, even though it did not participate in the earlier stages of this proceeding. FM Channel Assignments, 49 Rad. Reg. (P&F) 703 (B/cast Bur. 1981).

[2] Third Report and Order, 9 FCC Rcd ___ (1994).

I. Background

A. Disparate Services Become Competitors

The Commission established the Private Land Mobile Radio Services ("PLMRS") ("Specialized Mobile Radio" or "SMR") under Part 90 of its rules, in 1974 in the 800 MHz band. Since 1974, the SMR industry has grown and diversified rapidly. In recent years SMR service has matured into a diverse industry comprised of systems utilizing advanced technologies to provide an array of services. The services typically provided by an SMR operator range from traditional radio dispatch service for local customers to more sophisticated voice and data transmissions for customers over vast geographic areas. Existing 800 MHz SMR licensing rules provide for licensing on a site-specific and frequency-specific basis.

Since 1991, several 800 MHz SMR service providers have proposed consolidation and conversion of existing local analog systems into wide-area enhanced specialized mobile radio service ("ESMR") systems. The proposed ESMR providers have aggregated a significant number of channels in a given regional area and linked them in "daisy chain" fashion to create a contiguous service area.

In 1981, the Commission amended Part 22 of its rules to provide for the licensing and operation of cellular communications systems, Domestic Public Land Mobile Radio Services ("DPLMRS") ("Cellular") under Part 22 of the Commission's rules. Initially, licenses for blocks of 25 MHz were awarded on an MSA/RSA basis. The industry has grown providing basic mobile communications service to its customers.

Congress determined that SMR and Cellular provided like services, but are regulated differently. To remedy the perceived disparities in regulation of these like services, Congress amended Section 332(c) and (d) of the Act to provide that, to the extent SMR and Cellular provide equivalent mobile services, they will be consolidated into the Commercial Mobile Services and regulated in a similar manner.

B. The Commission's Attempt to Implement Symmetry in Regulation

On August 9, 1994, the Commission issued a News Release reporting the adoption of the Third Report and Order. Some six weeks later, on September 23, 1994,[3] the Commission released the text of the Third Report and Order. By the Third Report and Order, the Commission purported to "complete the initial implementation of Sections 3(n) and 332 of the Communications Act of 1934, as amended by Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993."[4] The Commission adopted rules purporting to establish regulatory symmetry among similar mobile services, including consolidation and reclassification of the Commercial Mobile Radio Services ("CMRS"), service area and channel assignment rules, technical specifications and a spectrum cap.

Purporting to respond to the Congressional mandate, the Commission has revised the structure for licensing CMRS facilities including 800 MHz SMR services to achieve what the Commission views as regulatory symmetry between 800 MHz SMR and Cellular services. The Commission adopted rules to license 800 MHz services by Major Trading Area

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[3] A summary of the text of the Third Report and Order was published in the Federal Register on November 21, 1994, 59 Fed. Reg. 59945.

[4] 9 FCC Rcd ___.

("MTA") and Basic Trading Area ("BTA") geographic regions rather than the site-specific licensing traditionally employed in the SMR services. The Commission will license a contiguous block of frequency to each licensee on an exclusive basis in its MTA or BTA. This scheme would more closely resemble the MSA/RSA licensing scheme utilized in Cellular, where each licensee is granted exclusive use of a 25 MHz block of spectrum.

In setting forth the wide-area MTA/BTA licensing scheme, the Commission established four elements: (1) large Commission defined service areas; (2) assignment of contiguous spectrum blocks to a single licensee on an exclusive basis; (3) use of construction and coverage requirements rather than loading requirements to ensure efficient use of the spectrum, and (4) technical and operational rules that afford maximum flexibility to locate, design, construct and modify facilities with one's licensing area, so long as no interference is caused to other licensees.

The linchpin of the Commission's scheme is the proposal to assign contiguous blocks of spectrum in the large MTA/BTA geographic regions. But as the Commission observed in Further Notice of Proposed Rulemaking,[5] "the 800 MHz band is heavily occupied in virtually all major markets and in many secondary markets and rural areas as well."[6] Further, in the Third Report & Order, the Commission cited Ericsson's comments, "here are no 800 MHz trunked SMR channels available in most markets."[7] Additionally, in light of the recent avalanche of applications for single-channel conventional (GX) facilities, CCI's experience

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5 9 FCC Rcd 2863.

6 9 FCC Rcd 2874, para. 32.

7 9 FCC Rcd ____, para. 93.

demonstrates that there are no 800 MHz SMR channels, trunked or conventional, available in most markets.[8]

It is clear, then, that because substantially no 800 MHz spectrum remains unoccupied, in order to assign contiguous spectrum blocks to new licensees on an exclusive basis within MTAs in BTAs, the Commission will have to displace the incumbent licensees already providing service on that same spectrum. It is also clear that if the Commission displaces licensees on two hundred channels in each designated trading area and has only eighty (80) lower channels for retuning the incumbents, and to which to "migrate" the incumbents,[9] sixty percent (60%) of the current licensees will be left with a valid license, but no spectrum on which to operate. Clearly, the rules as adopted fail to recognize that substantially all of the 800 MHz SMR spectrum is currently licensed and providing service to the public.

The rules as proposed create three different classes of competitors, each regulated differently.[10] This exacerbation of regulatory disparity among CMRS providers contravenes

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[8] For example, CCI has learned that the Commission authorized frequency coordinator, NABER, recently returned thirteen applications for single channel conventional facilities because no frequencies are available in Memphis, Tennessee - not a major market.

[9] It is also unclear how the Commission proposes to clear the lower 80 channels, which are currently substantially occupied.

[10] Specifically, the incumbent 800 MHz SMR licensee faces the auction of large blocks of spectrum in MTA and BTA geographic parcels. This proposal necessarily awards licenses to new entrants for the very spectrum on which these incumbents currently serve the public. The new entrants at 800 MHz will participate in competitive bidding. They will pay for the authority to use the spectrum by which they will compete in CMRS. Additionally, they will face the costs and delays associated with negotiating with and relocating the incumbent licensees. Finally, the incumbent cellular licensee has taken its authorization without participating in the competitive bidding process. The cellular incumbent does not face the re-allocation of its spectrum.

Section 332 of the Act. Implementation of the rules, then exceeds the Commission's authority to regulate CMRS.

II. The Licensing Rules Create Two Classes within the 800 MHz Spectrum

The proposed rules truly exacerbate the disparity among the regulation of the various CMRS players. The crux of this disparate treatment is the proposal to license not just remaining available spectrum, but all frequencies traditionally allocated to SMR and already occupied by service providers, by competitive bidding to a competitor of the incumbent SMR licensee. This proposal creates a third class of competitor. Sadly, these three classes of competitors do not play on a level field, despite the Commission's attempt at parity.

In implementing the CMRS licensing proposal, the Commission is adopting an auction in which the incumbents licensee's spectrum will be sold to the incumbent's competitor who is the highest bidder for the spectrum which the current SMR licensees use to serve their customers. This auction to the incumbents' competitors of the spectrum occupied by the incumbent creates a disparity between the incumbent and the competitor that is inconsistent with the statute and offensive to basic notions of fair play.

The Commission's decision to move to a system of licensing 800 MHz spectrum by MTA/BTA licensing threatens the very ability of the incumbent licensees to continue to compete. As explained above, because substantially all of the 800 MHz spectrum has already been licensed, future licensing of large blocks of 800 MHz spectrum, by MTA/BTA geographic divisions, will require incumbent licensees to relocate. The discussion of the Nextel proposal in the Third Report and Order[11] makes apparent, and the proposal set forth

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[11] 9 FCC Rcd __ - ___, para. 90-93, 102-106.

in the Further Notice of Proposed Rulemaking which grew out of the Third Report and Order[12], makes explicit, that the Commission will license spectrum already occupied by existing licensees, requiring the existing licensees to relocate.[13] This proposal is inconsistent with Commission policy and directly at odds with the Congressional mandate to achieve regulatory symmetry between and among CMRS providers.

Specifically citing Subpart S of Part 90 of the Commission's rules, that Part of the Commission's rules which governs the SMR industry, Congress assessed the wireless communications industry and found that private carriers had become functionally indistinguishable from common carriers. Clearly, Congress considers the incumbent licensees currently providing service to be CMRS competitors both among themselves and with cellular operators. It is the vigorous competition presented by these existing 800 MHz SMR licensees that prompted Congress to order symmetry between cellular and 800 MHz SMR.

In ordering competitive parity between the two services -- cellular and SMR -- Congress intended to order competition among all CMRS providers, including as among 800 MHz SMR operators. Yet the Commission's action creates a double competitive disparity for incumbent 800 MHz SMR licensees. The Commission will order incumbent licensees to migrate to a new portion of the spectrum, with all the attendant disruption, in order to

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[12] 9 FCC Rcd ____ (1994).

[13] If the incumbent licensees are not forced to relocate, at the very least, under the plan adopted by the Commission, they will be seriously constrained in the modification and expansion of their systems, artificially limiting their ability to compete in the CMRS marketplace.

auction the spectrum occupied by them to other 800 MHz SMR competitors. As a result, the newcoming SMR competitor will be able to serve much broader areas (MTA or BTA) and utilize much more spectrum (some block set aside by the Commission for its exclusive use) than the incumbents. The incumbents will be migrated to less desirable portions of the spectrum with far less available spectrum space and will be licensed on the traditional site-specific basis.

Similarly, cellular competitors of incumbent SMR operators will suffer none of the disruption associated with relocation. They will continue to have a wide coverage area, and will continue to be able to expand service within their assigned spectrum. If the Commission's proposal to assign, to newcoming competitors, exclusive occupancy of the channels currently occupied by incumbent licensees, is implemented, the incumbents will be forced to compete not only with Cellular licensees, but with an entity which would be granted the incumbent's very space in the spectrum, the incumbent's valid license notwithstanding.

The Commission may have authority to force its licensees to migrate to a different spectral position.[14] It is clearly beyond the Commission's authority in creating "regulatory symmetry" among CMRS providers to force an incumbent licensee, with a valid license and renewal expectancy, to move to an inferior channel position only to give over the incumbent's place to its competitor and place the incumbent at a competitive disadvantage.

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[14] See e.g. Personal Communications Services (Reconsideration of Second Report and Order) 75 Rad. Reg. 2d (P&F) 491, 9 FCC Rcd __ (1994).